

AMENDED IN ASSEMBLY MAY 1, 1997
AMENDED IN ASSEMBLY APRIL 15, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Cardoza

February 24, 1997

An act to amend Section 10006 of, and to add Section 10156.9 to, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as amended, Cardoza. Real estate: limited liability companies.

Existing law, the Real Estate Law, defines the term “person” to include a corporation, company, and firm. A violation of the Real Estate Law is a crime.

This bill would expand that definition to include a limited liability company. The bill would specify that the term “corporation” includes other persons other than natural persons. By expanding the scope of persons subject to the Real Estate Law, the bill would impose a state-mandated local program.

The bill would require limited liability companies licensed as real estate licensees to maintain errors and omissions insurance or other security for the payment of liabilities in specified amounts, unless insurance is not reasonably available, and to file proof thereof with the Real Estate Commissioner.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10006 of the Business and
2 Professions Code is amended to read:

3 10006. "Person" includes corporation, company, firm,
4 and limited liability company. As used in this part, the
5 term "corporation" includes all other persons other than
6 natural persons, as described in this section.

7 SEC. 2. Section 10156.9 is added to the Business and
8 Professions Code, to read:

9 10156.9. (a) At the time of licensing of a limited
10 liability company pursuant to this chapter and at all times
11 during which a limited liability company conducts
12 licensed activity, the limited liability company shall
13 provide security for claims against it based upon acts,
14 errors, or omissions arising out of licensed activity in this
15 state in any combination of the following methods:

16 (1) Maintaining a policy or policies of insurance
17 against liability imposed on or against it by law for
18 damages arising out of claims in an amount of at least two
19 hundred thousand dollars (\$200,000) for the first five
20 hundred thousand dollars (\$500,000) of annual gross
21 income and two hundred thousand dollars (\$200,000) for
22 each additional five hundred thousand dollars (\$500,000)
23 of annual gross income. However, the maximum amount
24 of insurance is not required to exceed one million dollars
25 (\$1,000,000) for claims initially asserted in any one
26 calendar year, less amounts paid in defending, settling, or
27 discharging those claims. This insurance requirement
28 shall be calculated based upon a reasonable estimate of
29 anticipated gross income. The policy or policies may be



1 issued on a claims made or occurrence basis. The
2 ~~impairment or exhaustion of the aggregate limit of~~
3 ~~liability by amounts paid under the policy in connection~~
4 ~~with the settlement, discharge, or defense of claims shall~~
5 ~~not require the company to acquire additional insurance~~
6 ~~coverage for the policy period to which the impairment~~
7 ~~or exhaustion applies. The policy or policies of insurance~~
8 ~~may be of a type reasonably subject to any terms,~~
9 ~~conditions, exclusions, and endorsements as are typically~~
10 ~~contained in those policies.~~ A policy or policies of
11 insurance maintained pursuant to this paragraph may be
12 subject to a deductible or self-insured retention not to
13 exceed 10 percent of the aggregate limit of liability
14 specified in this paragraph. However, a deductible or
15 self-insured retention may exceed that amount if the
16 company maintains funds in the manner provided for in
17 paragraph (2) in the amount of the difference between
18 the actual deductible or self-insured retention and that
19 amount.

20 (2) Maintaining in trust or bank escrow, cash, bank
21 certificates of deposit, United States Treasury obligations,
22 bank letters of credit, or bonds of insurers as security for
23 payment of liabilities imposed on or against it by law for
24 damages arising out of claims in an amount of at least two
25 hundred thousand dollars (\$200,000) for each five
26 hundred thousand dollars (\$500,000) of annual gross
27 income. However, the maximum amount of security is
28 not required to exceed one million dollars (\$1,000,000) for
29 claims initially asserted in any one calendar year, less
30 amounts paid in defending, settling, or discharging those
31 claims. This security requirement shall be calculated
32 based upon a reasonable estimate of anticipated gross
33 income. ~~The company remains in compliance with this~~
34 ~~section notwithstanding amounts paid from the accounts,~~
35 ~~funds, Treasury obligations, letters of credit, or bonds in~~
36 ~~any calendar year in defending, settling, or discharging~~
37 ~~those claims, provided that the amount of the accounts,~~
38 ~~funds, Treasury obligations, letters of credit, or bonds is~~
39 ~~increased to at least the amount specified in this~~
40 ~~paragraph as of the first business day of the next calendar~~

~~1 year. Notwithstanding the pendency of other claims
2 against the company, a limited liability company shall be
3 deemed to be in compliance with this paragraph if within
4 30 days after the time that a claim is initially asserted
5 through service of a summons, complaint, or comparable
6 pleading in a judicial or administrative proceeding, the
7 company has designated and segregated funds in
8 compliance with the requirement of this paragraph.
9 income.~~

(b) At the time of licensing pursuant to this chapter,
limited liability companies shall file with the
commissioner information demonstrating compliance
with the financial security requirements of this section.
Limited liability companies shall also file an annual
confirmation with the commissioner, signed by an
authorized member of the limited liability company,
demonstrating continuing compliance with the financial
security requirements of this section.

(c) A limited liability company licensed pursuant to
this chapter need not comply with this section if errors
and omissions insurance is not reasonably available for
real estate licensees. For purposes of this section,
“reasonably available” means that errors and omissions
insurance is offered to real estate licensees by two or more
insurers admitted to transact insurance in the state.

SEC. 3. No reimbursement is required by this act
pursuant to Section 6 of Article XIII B of the California
Constitution because the only costs that may be incurred
by a local agency or school district will be incurred
because this act creates a new crime or infraction,
eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section
17556 of the Government Code, or changes the definition
of a crime within the meaning of Section 6 of Article
XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government
Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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